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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1926

No. [redacted]266

ALASKA PACKERS ASSOCIATION (a corporation),
Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and JOHN PETERSON,
Respondents.

BRIEF OF RESPONDENT, JOHN PETERSON, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the State of California.

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Subject Index

	Page
There is no assignment of errors	1
Respondent Peterson was engaged in non-maritime work when injured	3
He could not have sued in an admiralty court	5
Respondent Peterson was injured on land	5
No Federal question as to the extraterritorial provisions of the California Compensation Act is shown by the petitioner	8

Table of Authorities Cited

	Page
Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 59	5
Herman v. Port Blakeley Mill Co., 69 Fed. 646	5
Old Nick Williams Co. v. U. S., 215 U. S. 541	3
Quong Ham Wah Co. v. Industrial Acc. Comm., 184 Cal. 26	8
State Industrial Commission of the State of New York v. Nordenholdt Corporation, et al., 259 U. S. 263, 275	5
The Jean L, 286 Fed. 727, 730	4
The Plymouth, 3 Wall. 20	5
The Sinaloa, 209 Fed. 287	4
The Sirius, 65 Fed. 226	4
Todahl v. Sudden & Christiansen, et al., 5 Fed. (2nd) 462	6

Rules of This Court Cited

	Pages
Rule 8	2
Rule 25, Par. 2 (e)	2, 3
Rule 24	1

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No. 1148

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BRIEF OF RESPONDENT, JOHN PETERSON, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the State of California.

I.

THE WRIT CANNOT BE GRANTED AS NO ASSIGNMENT OF ERRORS WAS FILED.

Rule 41 of this court reads:

"Where not otherwise specially provided, the rules relating to writs of error and appeals, including those relating to costs, fees and interest,

shall apply, as far as may be, to petitions for, and cases heard on certiorari."

Rule 8 reads:

"Where an appeal or a writ of error is taken to this court from a state court, a district court or a circuit court of appeals (see sections 237 (a), 238 and 240 (b) of the Judicial Code as amended February 13th, 1925) the plaintiff in error or appellant shall file with the clerk of the court below, with its petition for the writ of error or appeal, an assignment of errors (see Rev. Stat. sec. 997), which shall set out separately and particularly each error asserted. No writ of error or appeal shall be allowed unless such an assignment of errors shall accompany the petition. (See Rule 33.)"

There is no assignment of errors in the record, errors are mentioned on pages 3 and 4 of the petition, and with some divergence in the headings of the different paragraphs of the briefs, but such references are meaningless, as unless filed there can be no assignment of errors. The contents of the brief is provided for in Rule 25 and paragraph 2 (e) thereof reads:

"(e) A specification of such of the assigned errors as are intended to be heard"

Paragraph 4 of the rule reads:

"4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded, save as the court, at its option, may notice a plain error not specified or assigned."

Of course, we recognize the fact that the court will notice a plain error not assigned.

Old Nick Williams C. v. U. S., 215 U. S. 541.

But the court will not explore the record to find errors for itself. The petition herein does not even state the reasons relied on for the allowance of the writ.

And neither the brief nor the petition, contain the following requirements, sub. (c), Rule 25, as to the contents of the brief:

> "A concise statement of the grounds on which the jurisdiction of this court is invoked, embodying: (1) The date of the judgment to be reviewed, with references to pages of the printed record—e. g. (R. 7)—where the judgment and its date appear. (2) The specific claims advanced, and rulings made, in the lower court which are relied upon as the basis of this court's jurisdiction, with page references to the printed record. (3) A definite reference to the statutory provisions under which such jurisdiction is invoked. A reference to cases believed to sustain the jurisdiction."

We do not believe it is the duty of the court to look for jurisdiction where the same has not been pointed out.

II.

RESPONDENT JOHN PETERSON WAS ENGAGED IN NON-MARITIME WORK WHEN INJURED.

Even if his contract was maritime, it does not follow that a person cannot perform non-maritime services under it, but the employment itself creates a status to which the compensation law attaches.

The facts are that petitioner sends vessels to Alaska to can salmon, the crew sails the ship up, upon arrival they go ashore, the ship is unloaded, they then take the fishing boats out of the warehouses, in due time they go out and fish; when fishing stops they load salmon on lighters, then store the fishing boats away for the winter, then go back aboard and sail the vessel back to San Francisco. (R. 70, 71, 72, 73.)

Having finished with a boat in question for the season (R. 72), respondent was working to get the boat stored away for the winter when injured. (R. 73.) The fishing boat was purely local to Alaska, and had nothing to do with commerce or navigation, and it has not been pointed out in petitioner's petition or brief, how the general characteristic features of the maritime law can be disturbed by these proceedings. It has always been held, that even where a vessel has been engaged in interstate and foreign commerce, that a service performed on her when laid up, is non-maritime.

The Jean L., 286 Fed. 727, 730.

> "The service of one employed to take care of and clean the machinery and maintain a general supervision over a vessel lying at her home port out of commission is not maritime."

The Sinaloa, 209 Fed. 287;

The Sirius, 65 Fed. 226.

III.

RESPONDENT PETERSON COULD NOT HAVE SUED IN AN ADMIRALTY COURT.

The test as to admiralty jurisdiction in injury cases is, that the injury must have been received on water.

Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 59.

"I have always understood, that the jurisdiction of the Admiralty depended on the location of the act."

The Plymouth, 3 Wall. 20;

Herman v. Port Blakely Mill Co., 69 Fed. 646.

IV.

RESPONDENT PETERSON WAS INJURED UPON LAND AND THIS CASE IS CONTROLLED BY THE FOLLOWING CASES:

In

State Industrial Commission of the State of New York v. Nordenholdt Corporation, et. al., 259 U. S. 263, 275,

in which a stevedore, unquestionably performing maritime services, was injured while standing upon a wharf, and this court said:

"Insana was injured upon the dock, an extension of the land (Cleveland, Terminal & Valley R. Co. v. Cleveland S. S. Co., 208 U. S. 316, 52 L. ed. 508, 28 Sup. Ct. Rep. 414, 13 Ann. Cas. 1215), and certainly, prior to the Workmen's Compensation Act, the employer's liability for damages would have depended upon the common law and the state statutes. Consequently, when the Compensation Act superseded other state laws

> touching the liability in question, it did not come into conflict with any superior maritime law. And this is true whether awards under them are made as upon implied agreements or otherwise. The stevedore's contract of employment did not contemplate any dominant Federal rule concerning the master's liability for personal injuries received on land. In Jensen's case rights and liabilities were definitely fixed by maritime rules, whose uniformity was essential. With these the local law came into conflict. Here no such antagonism exists. There is no pertinent Federal statute; and application of the local law will not work material prejudice to any characteristic feature of the general maritime law." * * *

In the case of

Todahl v. Sudden & Christiansen, et al., 5 Fed. (2nd) 462,

a sailor was injured upon the land and the U. S. Circuit Court of Appeals for the Ninth Circuit said on page 464, speaking of the above *Nordenholdt* case:

> "In the case last cited it was held that where injuries occur while an employee is engaged in unloading a vessel on land, the local law and not the maritime law has always been applied, and that the state Compensation Act was applicable to the case." * * *

Under the law of the above two cases, it would seem incredible that the local law did not apply in a case such as this, where a man standing upon the shore of Alaska, was engaged in pushing a boat that was out of commission into the water, for the purpose of warehousing her for the winter, and where the boat itself was not, and never had been engaged in interstate or foreign commerce, but was purely a local

equipment; and counsel is in error when they state on page 21 of the brief, as follows:

"The instrumentality was a fishing vessel still in commission. The evidence is as follows (R. 72):

Q. What were you going to do with the boat?
A. Take it up on the dock, hoist it up.
Q. End of the season?
A. Yes.
Q. No more use for that boat?
A. No more use for that boat.
Q. For that season?
A. Yes.
Q. Fishing all over?
A. Yes, fishing was all over.
Q. How long had it been over?
A. We quit on Saturday, Sunday and Monday we took in the boats—Monday and Tuesday.
Q. What do you do every year? Hoist the boats up and put them in a warehouse?
A. Yes.
Q. That is what you were doing at this time?
A. We was doing that, but he was pushing his boat and then we helped him. We knew he couldn't do it.
Q. Those boats would stay there until the next year, wouldn't they?
A. Yes sir.
Q. In the warehouse?
A. In the warehouse, yes sir."

V.

COUNSEL HAVE NOT POINTED OUT ANY PROVISION OF THE FEDERAL CONSTITUTION THAT THE EXTRATERRITORIAL PROVISION OF THE STATE COMPENSATION LAW IS IN CONFLICT WITH.

Not having pointed out any constitutional provision that it is in conflict with, the presumption is, none could be found.

Both petitioner and respondent, Peterson, were residents of California; it would be very singular, if the legislature of the state could not create rights and attach liabilities to a status created between them in the state, where the status was to continue without the state, provided a right created by the status arose and the liability attached in a non-maritime matter such as this is. The matter is one of purely local concern, affecting residents in the state, and the state has a right to legislate on such matters, and we think the decision of the state Supreme Court in *Quong Ham Wah Co. v. Industrial Acc. Com.*, 184 Cal. 26, is conclusive, unless it conflicts with some Federal law, and none has been pointed out.

The Supreme Court of California properly says on page 36:

> "But the statute which is now before us assumes to extend its effect only in those cases *where the contract of hire was made in this state.* It is, therefore, not an attempt to create an obligation merely as an incident to a status, but is, in form and substance, a genuine regulation of contracts subject to the sovereignty of the state. The liability which it imposes is, so to speak, in a class by itself, being neither strictly contractual nor delictual and it may, for want of a better

term, be described as *quasi ex contractual* (Post v. Burger, 216 N. Y. 544, 550 (Ann. Cas. 1916 B. 158, 111 N. E. 351); Berton v. Dry Dock Co., 219 Fed. 763); the contract creates a relationship under the sanction of the law and the same law attaches as an incident thereto an obligation to compensate for injuries sustained abroad amounting to a sort of compulsory insurance. The legislature may lawfully impose that right and duty upon those operating under a contract subject to the legislative power, and no principle of law is defeated by attaching to such contracts the same duties and rights as incident to acts abroad that are lawfully imposed as incidents to the same act occurring within the geographical limits of the state. (Angell on Recoveries under Workmen's Compensation Law, for injuries abroad, 31 Harvard Law Review, 16; Smith v. Heine Safety Boiler Co., 224 New York 9 (Ann. Cas. 1916 D. 316, 119 N. E. 873); Jenkins v. T. Hogan & Sons, 177 App. Div. 36 (163 N. Y. Sup. 707).)

It is at once apparent that the legislature has equal power to provide for the creation of a compulsory obligation to compensate for injury suffered elsewhere as a regulation of contracts subject to the sovereignty of the state whether the contracting employee be domiciled in this state or not. * * *" (Cases cited.)

This court, speaking of compensation acts, in the *Nordenholdt* case, says:

"whether awards under them are made as upon implied agreements or otherwise" * * *

We submit, that there cannot be any objection to an implied agreement arising under a maritime contract upon a non-maritime matter.

The matter of injuries on shore, not being a subject of Federal legislation, how can it be held that a

state cannot legislate upon the subject? As to the case of *Union Fish Company v. Erickson,* cited in petitioner's brief, that was an action on contract for master's wages, and he was entitled to his contractual wages, whether he worked on shore or on land.

We respectfully submit, that the petition should be denied.

Dated, San Francisco,
June 6, 1927.

H. W. HUTTON,
Attorney for Respondent,
John Peterson.